

Remarks

The Office Action dated March 6, 2007 has been carefully reviewed and the foregoing amendments are submitted in consequence thereof.

Applicants believe that no extension of term is required and that no additional fee for claims is required. If any additional fee is required for an extension of term or claims, the Commissioner is hereby authorized to charge Deposit Account No. 01-2384.

Claims 47-87 are now pending in the present application, of which claims 51, 60, 65, 73, 77, 86 and 87 have been amended. It is respectfully submitted that the pending claims define allowable subject matter.

A. Drawing Objections.

The objection to the drawings is respectfully traversed.

Dependent claims 51, 65, 77, 86 and 87 have been amended to recite a single-pole telescoping member that is believed to render the noted issue in the Office Action moot. Applicants respectfully point out, however, that the spaced apart arms remain with the scope of the independent claims as properly interpreted, which are not restricted to single-poles and would literally encompass arms that are not single-poles within their scope.

Applicants in no way acquiesce in the position taken in the Office Action on pages 4 and 5 with respect to any alleged issues with the drawings or associated claims. Specifically, Applicants maintain the position set forth in Applicants' previous response on these issues, and the amendment to claims 51, 65, 77, 86 and 87 are presented solely for the sake of expediency to move the application closer to allowance.

Applicants therefore respectfully request that the objections to the drawings be reconsidered and withdrawn.

B. The § 112 Rejections

The rejections of claims 51, 60, 65, 73, 77 and 86-87 under 35 U.S.C. § 112, first paragraph is respectfully traversed. Claims 51, 60, 65, 73, 77 and 86-87 have been amended in a

manner that renders the objections moot, and Applicants accordingly request that the objections to these claims be reconsidered and withdrawn.

The rejection of claims 51, 65, 77, 86 and 87 relates to the objections to the drawings noted above, and Applicants reiterate that the amendments to these claims were made solely for the sake of expediency and are not made in acquiescence with the issues noted in the Office Action.

The rejection to claims 60 and 73 relates to recitations concerning a rigid base. Applicants have deleted the word “rigid” from these claims as a matter of expedience to overcome the rejection, but respectfully disagree with the position taken in the Office Action that the specification fails to teach a rigid base. The amendments to claims 60 and 73 are not made in acquiescence with the rejections to claims 60 and 73.

Applicants therefore respectfully request that the rejections of claims 51, 60, 65, 73, 77 and 86-87 under 35 U.S.C. § 112, first paragraph be reconsidered and withdrawn.

C. The Prior Art Rejections

Applicants will now consider the prior art rejections in the order set forth in the Office Action.

1. Lu ‘344

The rejection of claims 47-48, 52-59, 61, 66-72 and 74-87 under 35 U.S.C. § 102(e) as being anticipated by Lu (U.S. Patent No. 6,508,344) is respectfully traversed.

The rejection of claims 47-48, 52-59, 61, 66-72 and 74-87 under 35 U.S.C. § 102(e) is believed to be overcome on two alternative bases. First, the Lu ‘344 reference is not “prior art” that can be used to reject the present claims. Second, regardless of whether Lu ‘344 is or is not “prior art”, it does not anticipate the present claims. Each of the two bases for overcoming the rejection are discussed below.

a. The Disqualification of Lu '344 as Prior Art

Applicants position, fully set forth in Applicants' previous responses, that Lu has been adequately disqualified as prior art under either of 37 C.F.R. §§ 1.132 and 1.132 that can be used to reject the claims is generally maintained. In the present Office Action, however, it is noted that the declaration of record is insufficient for failing to show the locking structure disclosed by in the Lu '344 reference.

In response, Applicants once again note, that M.P.E.P § 716.10 provides that an uncontradicted, unequivocal statement in a 1.132 submission that the Applicants invented the subject matter disclosed in a reference, which has been provided in the present case, will be accepted as establishing inventorship. Absent some evidence to contradict the 1.132 declaration, which the Examiner has not supplied and which Applicants do not believe exists, the Office should accept the 1.132 declaration. Applicants again respectfully request that that if the examiner is aware of any information or evidence that calls the factual assertions of the declaration into question that such information or evidence included in the next communication for Applicant's consideration and reply. Otherwise the declaration should be accepted and any rejection that relies on Lu '344 should be withdrawn.

b. Lu '344 is not an anticipating reference.

Notwithstanding the above, disqualification of the Lu '344 reference as prior art is not necessary to overcome the present rejections. Applicants note that Lu '344 does not meet the recitations of the presently pending claims, and Lu '344 is not an anticipating reference.

Applicants note the following with respect to the applicable law of anticipation. As explained by the Federal Circuit, a rejection on the ground of "anticipation" requires a disclosure in a single piece of prior art of each and every limitation of a claimed invention. A finding of anticipation requires that the publication describe all of the elements of the claims arranged as in the patented device. In other words, to anticipate, a single reference must teach every limitation of the claimed invention. In light of this standard, the Lu '344 reference is deficient as an anticipating reference. The application of the Lu' 344 reference to the claims is summarized in

paragraph 3 on page 3 of the present Office Action, but certain aspects of the claims are notably absent and not addressed in the present Office Action.

For example, claim 47 recites a towing handle pivotally connected to a distal end of an arm, the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise unable to move relative to the distal end. The Lu '344 handle, as shown in Figures 5 and 6, is pivotal about a first center axis (6) shown in Figure 5, *and* is movable about a second axis extending perpendicular to the axis (6) as shown in Figure 6. The movement shown in Figure 6 of Lu'344 is expressly precluded by the language of claim 47.

Claim 47 also recites that the arm is "curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end." Lu '344 does not disclose that the pulling bars (11) are curved in such a manner. Claim 47 is therefore clearly not anticipated by Lu '344 and claim 47 is submitted to be patentable over Lu'344.

Claims 48, 52-59 and 86 depend from claim 47, and when the recitations of claims 48-48, 52-59 and 86 are considered in combination with the recitations of claim 47, claims 48-48, 52-59 are likewise submitted to be patentable over Lu '344.

Likewise, claim 61 recites the towing handle "fixedly mounted to the distal end along an axis extending generally perpendicular to the center axis while being configured to pivot generally about the center axis at the distal end of the arm." Lu '344 is not fixedly mounted along an axis perpendicular to the center axis of the bars (11), but rather is movable about the perpendicular axis as illustrated in Figure 6. Claim 61 is therefore not anticipated by Lu '344.

Claims 66-72 and 87 depend from claim 61, and when the recitations of claims 66-72 and 87 are considered in combination with the recitations of claim 61, claims 66-72 and 87 are likewise submitted to be patentable over Lu '344.

Claim 74 recites "at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path

between a retracted position and an extended position.” Lu ‘344 does not disclose that the bars (11) are movable along a curved telescoping path, and claim 74 is not anticipated by Lu ‘344.

Claims 75-85 depend from claim 74, and when the recitations of claims 75-85 are considered in combination with the recitations of claim 74, claims 75-85 are likewise submitted to be patentable over Lu ‘344.

Applicants accordingly request that the rejection of claims 47-48, 52-59, 61, 66-72 and 74-87 be withdrawn.

2. Lu ‘344 in view of Myoshi

The rejection of claims 47-59, 61-72 and 74-87 under 35 U.S.C. § 103(a) as being unpatentable over Lu ‘344 in view of Miyoshi (U.S. Patent No. 5,908,093) is respectfully traversed.

Applicants note that Lu ‘344 has been properly disqualified as “prior art” that can be used to reject the claims, and any rejection relying upon Lu ‘344 is accordingly overcome as a procedural matter. Applicants also note, however, that disqualification of Lu ‘344 is not necessary to overcome the present obviousness rejections to the claims.

Applicant submits that the presently claimed invention is not obvious over Lu ‘344 in view of Myoshi. The United States Supreme Court has recently held that obviousness rejections must be supported with “articulated reasoning with some rational underpinning to support the conclusion of obviousness.” See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. The present rejection does not appear to meet this standard as it reflects no articulate reasoning *why* the independent or dependent claims are believed to be obvious, but rather is stated in the form of a conclusion of obviousness. Applicants accordingly request specific explanation and articulation regarding the reasoning and rational underpinning for any obviousness rejection of the claims. It is not believed that adequate reasons *why* the presently claimed invention is believed to be obvious have been provided on the present record.

Lu ‘344 is described above, and is notably deficient in disclosing or teaching certain aspects of the invention claimed. With respect to the Myoshi reference, Applicants wish to point

out that the United States Supreme Court has also recently noted that when the prior art teaches away from combining certain elements, a combination of those elements is more likely to be nonobvious. See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. The reliance upon Miyoshi appears to be particularly suspect from this perspective for certain of the presently rejected claims.

For example, independent claim 47 recites that the axial length of the arm is “curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end.” Claim 62, depending from independent claim 61, recites that the arm includes a curved portion “moving along a curved telescoping path between a retracted position and an extended position, the distal end of the arm being positioned forward of the baggage and not positioned over the baggage when the arm is in the extended position.” Independent claim 74 recites “at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position” and “the towing handle being positioned forward of the base and not positioned over the base when the at least one arm is in the extended position.”

Myoshi teaches away from the presently claimed invention of at least claims 47, 62 and 74 by teaching a structure opposite to the recitations of these claims. That is, the distal end of the curved arms disclosed in the embodiments of Myoshi depicted in Figures 5, 6, 9 and 10 are curved toward the center axis of the depicted bags such that a distal end of the arms is closer to the center axis of the bag when in the extended position than the proximal ends of the arms. Specifically, Myoshi discloses that:

As shown in Figures 5 and 6, the three segment extensible rods 55 are curved so that the grip 53A when fully extended upwardly, is positioned at the middle of the bag upper face between the left and right sides of the bag body 54.

See Myoshi col. 4, lines 53-57. Myoshi teaches the construction of the curved arms is significant in that:

The grip can be placed at the middle between the left and right sides of the bag body. For this reason, the extensible rods of the handle are placed in a location where they will not interfere with placement of the items in the bag interior, and

the object of providing a bag which can be easily moved in any direction while lightly holding the grip is realized.

See Myoshi col. 3, lines 20-26.

Myoshi further disclose that:

The handle 53 is locked in the pulled-out position so that one can lean on the grip 53A while easily moving the bag supported by casters 51 by push[ing] the bag while leaning on the grip 53A, that is to say the bag can function as a walking stick.

See Myoshi col. 5, lines 48-52.

It is therefore clear from the Myoshi reference that the curvature of the Myoshi handle rods was deliberately chosen and taught by Myoshi to center the handle grip in the middle of the bag to provide a bag that can be more easily pushed in plane cabins or crowded areas while lightly holding the handle grip, as opposed to being firmly held to prevent the bag from turning, as well as to not hinder placement of items within the bag. See Myoshi col. 2, lines 1-23 and lines 49-55. Myoshi also notes that such pushable bags are advantageous in that no weight is transmitted to the handle in such a bag, and even a fairly heavy bag can be pushed and moved. See Myoshi col. 2, lines 5-7.

In contrast, the handle structure of Lu '344 and as presently being claimed relate to towing handles for towable baggage that is generally designed to be pulled behind a user, rather than pushed in front a user as Myoshi teaches. It is therefore respectfully submitted that one of ordinary skill in the art at the time that the invention was made, using common sense, would not have incorporated the curved rods of Myoshi that are specifically designed for pushing of the bag, into a towable bag such as that of Lu '344. Looking at the Lu '344 and the Myoshi disclosures, no apparent benefit of utilizing curved arms in the Lu '344 bag is believed to be apparent, and curving the arms in an opposite direction to that taught by Myoshi, as the present claims require, conflicts with the actual teaching of the references. It is not believed to be obvious to forsake a clear teaching of the Myoshi reference and construct exactly what Myoshi teaches against by reversing the curvature of the handle rods as the present claim invention requires. There is a clear, fundamental incompatibility between the teaching of the Myoshi

reference and the Lu reference, and the present claims that weighs against any conclusion of obviousness. Applicants therefore request reconsideration and withdrawal of the present obviousness rejection, specifically as it relates to claims 47, 62 and 74.

Aside from the curvature of the arms, still other features claimed are not found in either of the Lu '344 and the Myoshi disclosures that are believed to render the claims to be unobvious over Lu '344 and Myoshi. For example, Miyoshi does not cure the deficiencies of Lu '344 with respect to claim 47 discussed above in reference to the Section 102 rejections. In fact, Miyoshi does not disclose a handle movable in any way relative to a distal end of an arm, and adds nothing to the teaching of Lu '344 on this aspect of the invention.

The combination of Lu'344 and Myoshi therefore collectively fail to teach all of the recitations of claim 47, and claim 47 is accordingly submitted to be patentable over Lu '344 in view of Miyoshi. When the recitations of claim 48-59 and 86 are considered in combination with the recitations of claim 47, claims 48-59 and 86 are likewise submitted to be patentable over Lu '344 in view of Myoshi.

Claims 62-72 and 87 depend from claim 61, also submitted to be patentable over Lu '344 for the reasons set forth above. Miyoshi does not cure the deficiencies of Lu '344 with respect to claim 61. As noted above, Miyoshi does not disclose a handle movable in any way relative to a distal end of an arm and is therefore submitted to add nothing to the teaching of Lu '344 with respect to claim 61. The references therefore collectively fail to teach all of the recitations of claim 61 and claim 61 is accordingly submitted to be patentable over Lu '344 in view of Myoshi. When the recitations of claim 62-72 and 87 are considered in combination with the recitations of claim 61, claims 62-72 and 87 are likewise submitted to be patentable over Lu'344 in view of Myoshi.

Claims 75-85 depend from claim 74, and when the recitations of claims 75-85 are considered in combination with the recitations of claim 74, claims 75-85 are likewise submitted to be patentable over Lu '344.

Applicants accordingly request that the § 103(a) rejection of claims 47-59, 61-72 and 74-87 be withdrawn.

3. Lu '344 in view of either Tsai or Hung-Hsin

The rejection of claims 60 and 73 under 35 U.S.C. § 103(a) as being unpatentable over Lu '344 or Lu'344 in view Myoshi and either Tsai (U.S. Patent No. 5,524,920) or Hung-Hsin (5,374,073) is respectfully traversed.

Applicants again submit that Lu '344 has been properly disqualified as prior art that can be used to reject the claims, and any rejection relying upon Lu '344 is accordingly overcome as a matter of procedure.

Notwithstanding the above, Applicant submits that the presently claimed invention is not obvious over Lu '344 in view of either Tsai and Hung-Hsin. To the extent that the rejection relies upon Myoshi, Applicants respectfully submit, for the reasons set forth above, that a prima facie case of obviousness has not been established due to Myoshi's teaching away from Lu '344 and the presently claimed invention.

Claim 60 depends from claim 47, submitted to be patentable over Lu '344 for the reasons set forth above. Tsai and/or Hung-Hsin do not cure the deficiencies of Lu '344 with respect to claim 47. In fact, neither Tsai nor Hung-Hsin discloses a handle movable in any way relative to a distal end of an arm, and neither Tsai nor Hung-Hsin teach a curved arm as recited in claim 47. Tsai and Hung-Hsin therefore add nothing to the teaching of Lu '344 relating to the claimed invention and Lu '344, Tsai and Hung-Hsin therefore collectively fail to teach all of the recitations of claim 47.

Claim 47 is accordingly submitted to be patentable over Lu '344 in view of either Tsai or Hung-Hsin. When the recitations of claim 60 are considered in combination with the recitations of claim 47, claim 60 is likewise submitted to be patentable over Lu '344 in view of either Tsai or Hung-Hsin.

Claim 73 depends from claim 61, submitted to be patentable over Lu '344 for the reasons set forth above. Tsai and/or Hung-Hsin do not cure the deficiencies of Lu '344 with respect to claim 61. As noted above, neither Tsai nor Hung-Hsin discloses a handle movable in any way relative to a distal end of an arm, and consequently neither Tsai nor Hung-Hsin adds to the

teaching of Lu '344 with respect to claim 61. Lu '344, Tsai and Hung-Hsin collectively fail to teach all of the recitations of claim 61 and claim 61 is accordingly submitted to be patentable over Lu '344 in view of either Tsai or Hung-Hsin. When the recitations of claim 73 are considered in combination with the recitations of claim 61, claim 73 is likewise submitted to be patentable over Lu '344 in view of either Tsai or Hung-Hsin.

Applicants accordingly request that the § 103(a) rejection of claims 60 and 73 be withdrawn.

D. Conclusion

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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